



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5483-99

19 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 15 January 1963 at age 17 for a minority enlistment. The record reflects that you served without incident until 29 July 1965 when you received a nonjudicial punishment for a 25 day period of unauthorized absence (UA). Punishment consisted of 60 days of restriction.

You served without further incident until 3 August 1965 when you made a voluntary statement that you became involved in homosexual activity approximately five years ago and had been involved with about 25-30 persons since that time. You stated that since April 1965 you committed homosexual acts with five civilians on 17 different occasions. You met these individuals on the street or in a bar near the shipyard and performed homosexual acts mainly because of the money they offered you and for the sexual enjoyment.

On 9 August 1965 you agreed to accept an undesirable discharge for the good of the service in lieu of trial by court-martial.

You waived your rights to representation by counsel and presentation of your case to an administrative discharge board. Thereafter, the commanding officer recommended that you be separated by reason of unfitness due to your homosexual involvement. He noted in his recommendation that you had been administered a polygraph test and there was no indication of deception in your responses. On 19 August 1965, an enlisted performance evaluation board convened in the Bureau of Naval Personnel and recommended that you be separated with an undesirable discharge by reason of unfitness. The Chief of Naval Personnel approved the recommendation and you were so discharged on 31 August 1965.

On 8 June 1979 the Naval Discharge Review Board (NDRB) recommended to the Assistant Secretary of the Navy (ASN) that your request to upgrade the undesirable discharge be denied. The ASN approved that recommendation on 14 November 1979.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been 34 years since you were discharged. The Board noted the issues you presented to the NDRB in June 1979, your contention to the effect that during the NDRB hearing your counsel made incorrect statements regarding your homosexual conduct, and your desire to appear before a traveling panel. The Board also noted the significant changes in homosexual policy since you were discharged. However, the Board concluded that these factors and contentions were insufficient to warrant recharacterization of your discharge. In this regard, your homosexual conduct falls within at least one of the aggravating factors set forth in current regulations, specifically, receiving compensation for a homosexual act. Thus, even under current standards, discharge under other than honorable conditions would be appropriate in your case. The Board thus concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You are advised that the NDRB discontinued the use of traveling panels some years ago. Personal appearance hearings are rarely granted by this Board and only when, in executive session, it determines that a case cannot be resolved without the individual's presence, or a personal appearance would serve some other useful purpose. Your presence was not required for the Board to make a decision.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the

Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director